Michigan Association of Circuit Court Administrators

President
Kelly Aylsworth
Trial Court Director
20th Circuit Court
414 Washington St., Ste. 303
Grand Haven, MI 49417
616-846-8356

Vice President
Kathy Griffin
Court Administrator
45th Circuit Court
125 Main Street
Centerville, MI 49032
269-467-5595

Secretary
Charles Adkins
Court Administrator
4th Circuit Court
312 S. Jackson Street
Jackson, MI 49201
517-768-8565

Treasurer
Patricia A. Steele
Circuit Court Administrator
14th Circuit Court
990 Terrace Street
Muskegon, MI 49422
231-724-6323

September 28, 2009

Michigan Supreme Court Clerk
P.O. Box 30052
Lansing, MI 480909

Re: ADM File No. 2005-13

Dear Clerk:

I am writing to comment on the proposal to establish and require compliance with the Court Collections Program and Reporting Requirements

The Michigan Association of Circuit Court Administrators generally supports the effort to improve the collection of court receivables, but has some concerns regarding the proposal.

A key concern is the imposition of additional duties upon local court staff at a time of unprecedented calls for budget cuts and fiscal restraint from funding units. The Michigan circuit courts are diverse in the nature of their jurisdictions, case load and staff resources. Many of the clerical services for circuit courts are performed by an independent public official, the County Clerk. The County Clerks do not generally view collection activity as part of their role in the court system. Courts can advocate for, but cannot require, their County Clerk and/or funding unit to cooperate or provide resources to assist in collections. The funding units may be skeptical whether an investment in collections is wise, in view of the uncertainty of a return on the investment. Courts must necessarily concentrate their efforts on their core duty to provide forums for the adjudication of civil and criminal disputes. The proposal should take the availability of resources into account.

We do not believe the Court Collections Advisory Committee ever intended its detailed recommendations to become auditable mandatory requirements. Instead, they were general recommendations to the courts of practices they might wish to consider and adopt if practical for their jurisdiction. This proposal appears to mandate compliance with Court Collections Program Requirements without regard to the availability of staff to engage in collection related activity or the practicality of specific requirements. Thus, we are concerned by the combination of promised audits and overly broad requirements. Trial court managers, having been subject to audits, know how auditors think. They will interpret the component details literally and find courts out of compliance readily:

> For example 1(b)(iv) states that collections staff 'use *all* available resources' to locate litigants. A mandate that broad should not be used. Auditors are likely to say a court isn't in compliance with this component unless it employs *all* locater services regardless of cost, practicality or serviceability. This component contrasts with component 9, which generically says a court uses a locator service(s) to help maintain accurate contact information. We can live with component 9. We can't use "all" locater services.
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> See also 1(b)(v), 'review dockets for all judges, magistrates, and referees to determine if an individual who is delinquent will be present for a court proceeding for any reason.' To be in literal compliance, this would require that every name on every docket, every day, be checked in the computer system by an employee to see if the litigant is delinquent. Strangely, it doesn't call for the courts to do anything with this information! We assume it contemplates enforcement action would then be taken by the judicial officer. While it may be wonderful to be able to do this, it is not practical to order all courts, State-wide, regardless of resources, to do so. Larger circuit courts may have more support staff, but also have hundreds of cases per day on the dockets of judges and referees. Courts do not have the spare staff time to do this. It is unlikely judges and referees have the available time to review and act upon such information. Again, given the posture of this component detail as a mandate, an auditor would find any court not looking up every individual out of compliance.
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> See also 1(b)(vi), 'get jail release dates from the sheriff and make payment arrangements with litigants before release.' While this might be a useful potential collection practice, it is impractical to mandate that every court in every county do so. Aside from the sheer number of inmate releases, how would court staff contact or meet with defendants and try to arrange payment? How can courts send staff to jails on a daily basis? Would Sheriffs have to bring all inmates to the courts before release to work out payment arrangements? This would hamper Sheriffs' management of their inmate population. It would increase their transportation costs. It may increase their staffing costs and cause inmates to be detained longer than necessary. It may increase jail overcrowding. It is a practical nightmare. It is questionable whether discussing payment arrangements with exiting jail inmates would result in increased collections in every

jurisdiction. Again, we have no problem with recommending this for use in jurisdictions in which this is practical and desirable. Mandating it is unrealistic.

Another concern is that many of the fees and fines collected by courts accrue to the benefit of the State or State agencies without any of the money being allocated to the local Court to compensate it for providing the collection. Collection of State obligations should be the responsibility of the State, not local court staff.

A huge and growing percentage of court receivables is restitution to victims. While it is an attractive public policy to require victims of crime to compensate victims for their loss, making restitution a court receivable skews the courts' efforts to enforce compliance with their other orders. By and large, persons convicted of crimes in circuit courts do not have the ability to pay the restitution which is being ordered. Restitution is established regardless of ability to pay. It is not owed to the courts, but to victims. It does not have a statute of limitations. Thus, the Courts cannot compromise this receivable or discharge it. Accounting for restitution will be a growing effort. Courts receive no compensation for managing and attempting to collect restitution, other than feeling good about 'doing the right thing.' We believe that restitution should be treated separately from other court receivables. Since it is a program created by the State, it should be accounted for and collected by the State, possibly the Department of Corrections.

We suggest that the application of sums obtained from State prisoners by the Department of Corrections for amounts owed to the State be revamped. At present, when the DOC withdraws money from prisoners' accounts to pay obligations pursuant to 'sweep' orders or State law, it sends the money to the originating court. The court then must deposit, account for and pay the appropriate portion of the money back to the State. This requires a great deal of wasted effort and accounting, when the money is destined for the State anyway. We propose that the DOC forward State money directly to the appropriate State agency and provide an accounting to local courts which we can appropriately apply to our receivables.

Thank you for the opportunity to comment on the proposal.

Very truly yours,

Kelly Aylsworth

Kelly Aylsworth
President

cc: MACCA Membership